

CALIFORNIA COASTAL COMMISSION

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Hearing Date: 12/11/03
Commission Action:

**STAFF REPORT: PERMIT AMENDMENT**

APPLICATION NO.: A5-RPV-93-005-A-19 (Ocean Trails/V.H. Property)

APPLICANT: V. H. Property

AGENTS: Vincent Stellio, Jeff Kaplinski

PROJECT LOCATION: One Ocean Trails Drive, City of Rancho Palos Verdes, Los Angeles County.

UNDERLYING PROJECT: Resubdivision of 261.4-acre site into two Tracts (VTTM Tract Nos. 50667 & 50666), and creating 75 graded lots for single-family residences, four lower cost apartment units, utilities and site improvements, 18-hole golf course with clubhouse and public open space, parks and trails. Revised by applicant for *de Novo* action to include: A) Coastal Access and Public Amenities Plan dated Feb. 5, 1993 providing additional beach access trails, B) Habitat Enhancement Plan dated February 18, 1993 providing (1) restriction of 20 acres in Shoreline Park adjacent to the project to the west to habitat preserve and restoration of ten of those acres; (2) purchase of easement over a 100 acre City parcel adjacent to the project on the north and located outside the coastal zone and restoration of 20 of those acres to coastal sage scrub; (3) supervision of public access trails in the habitat areas. Subsequently amended seventeen times, as indicated in Appendix B. The Commission denied one amendment (A14). This project is also identified as "Ocean Trails."

PREVIOUS AMENDMENTS: See Appendix B

SUMMARY OF AMENDMENT 19:

- 1) Reconfigure 11 golf holes on golf course, add tournament tees to several holes, construct water features, (waterfalls and associated ponds and imitation rock retaining walls) at three holes; lot line adjustments in two locations: at hole 4 and lot 34 tract 50667 a residential lot, and at hole 5 between the golf course lot and lot C, a buffer strip adjacent to the residential lots in tract 50667.
- 2) Removal of 0.8 acres of coastal sage scrub habitat (CSS) that is presently established on the golf course and planting 1.14 acres of CSS on the golf course in areas not previously committed to be planted in previous Commission approvals.
- 3) Change approved coastal sage scrub installation plan for the golf course required as part of Habitat Conservation Plan and coastal permit

requirements. The change would convert 0.3 acres that were previously planted in CSS and removed by the landslide stockpiling approved in amendment A-5-RPV-93-005-A15 to golf course use. CSS removed for landslide repair was to be replaced in place; instead, the applicant proposes to replace it as part of the new 1.14-acre CSS installation.

Applicant's Proposed Habitat and Restoration Map, See Exhibit 1.

SUMMARY OF STAFF RECOMMENDATION:

This proposal raises three issues: The first issue is whether installation of water features on land where a 17-acre landslide has occurred could destabilize the site, resulting in damage to the golf course and to the associated habitat, parks and trails. The second issue is whether the removal and relocation of 0.8 acres of scattered plantings of coastal sage scrub installed on the golf course as project mitigation is consistent with LCP policies protecting environmentally sensitive habitat and with the Commission's 1993 action approving this permit and its subsequent amendments. These changes will require removal, relocation and reinstallation of some habitat installed on the golf course as part of the Habitat Conservation Plan, in order to mitigate for the project's impacts on the habitat of the threatened coastal California gnatcatcher. The third issue is the creation of new golf tees that are closer to existing bicycle and pedestrian trails than existing tees. In particular, the boundary of the graded pad of the new tee located at Hole 9 is located only 7 feet from the pedestrian/bicycle trail that leads along the bluff and then through the site, and the tee itself is 19 feet from the trail (Exhibit 3). A proposed "tournament tee" at Hole 5 would drive across a vertical access path from the major public road (Palos Verdes Drive South) that connects a turn-off and six car parking lot to the project trails (Exhibit 4). Staff recommends removal of the tee at Hole 9 in order to protect the public's right to use the adjacent trail safely, and protects a previously required wetland mitigation area. Staff also recommends limitations on use of the tee at Hole 5 to the approved six annual special events.

Staff recommends approval of the project with additional special conditions to address habitat, geologic safety, water quality and public access along dedicated trails. The changes include: (a) revisions of previously approved Special Condition 8 to require the establishment of the replaced habitat on the golf course before opening the 18 hole golf course for play; (b) a new special condition 36 to require installation of monitoring wells at Hole 1, liners, subdrains and water flow monitors at each new water feature as recommended by the project consultant and the City in technical reports provided to the Commission staff in conjunction with this amendment; and extending the clay cap underneath the new tees, having tested the suitability of the material to be used in constructing the cap; (c) constructing the new retaining walls according to recommendations of the City's and applicant's geologic consultants; (d) conformance with all other recommendations of the project geologist, the City consultant, Cotton Shires and the City's Lake Consultant with regard to the safety of the installations; (e) elimination of

the new tee at Hole 9; (f) a survey verifying that the dimensions of the mitigation plantings, parks and habitat preserves conform to permit requirements. All other previously imposed special conditions shall remain in effect.

LOCAL APPROVALS RECEIVED:

1. City of Rancho Palos Verdes CUP 163, et al. "Modifications to Holes # 2, #3, #4, #5, #7, #9, #16 and Landslide C Area Course Modifications Creating New Back Tees for Holes #1 and #12," 5/15/03.
2. City of Rancho Palos Verdes Director of Planning, Building and Code Enforcement, Memorandum "Proposed Amendment to the Ocean Trails Project," April 29, 2003.
3. City of Rancho Palo Verdes CUP 163, et. al., "Modifications to Holes #1, #4, and #17 including new water features".
4. City of Rancho Palos Verdes, Memorandum from Gregory Pfof, Deputy Planning Director to Director of Planning Building and Code Enforcement, "Golf Course Modifications to the Ocean Trails Project," May 14, 2003.
5. City of Rancho Palos Verdes Director of Planning, Building and Code Enforcement, Memorandum "Review of proposed water features at the Ocean Trails Golf Course," May 20, 2003.
6. Goebel, Karen A., United States Fish and Wildlife Service and Tippetts, William E, California Department of Fish and Game, Letter to Mike Sweesy, "Comments on the proposed modifications to the Ocean Trails Golf Course in the City Of Rancho Palos Verdes," ref. FWS/CDFG-LA-769.3, August 5, 2003.

COMMISSION'S PREVIOUSLY ADOPTED SPECIAL CONDITIONS, (WITH RECOMMENDED CHANGES INSERTED): SEE APPENDIX A

PREVIOUS AMENDMENTS: SEE APPENDIX B, available in Commission files.

SUBSTANTIVE FILE DOCUMENTS: SEE APPENDIX C

PROCEDURAL NOTE: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- (1) The Executive Director determines that the proposed amendment is a material change,
- (2) Objection is made to the Executive Director's determination of immateriality,
- (3) Or, the proposed amendment affects conditions required in order to protect a coastal resource or coastal access.

In this proposed amendment to a conditionally approved permit, the proposed revision is a material change that affects conditions required for the purposes of protecting natural resources and coastal access. Therefore, the Executive Director has determined that the change must be reported to the Commission and noticed to the public.

I. STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the amendment to the permit and adopt the following resolution:

MOTION: *I move that the Commission approve the proposed amendment to Coastal Development Permit No. A5-RPV-93-005-A19 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE A PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment on the grounds that the development, as amended and subject to conditions, will be in conformity with the policies of the certified LCP and with the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. STANDARD AND SPECIAL CONDITIONS:

THE FOLLOWING IS ADOPTED AS PART OF THE COMMISSION'S RESOLUTION:

NOTE: Appendix A, attached, includes all standard and special conditions that apply to this development as approved by the Commission in its original action and its subsequent amendments, including this Amendment 19. Changes in the names of parks and trails adopted by the City of Rancho Palos Verdes are inserted into the park and trail designations. The previous designations are provided for purposes of clarity. Corrections to typographic or stylistic errors, which the Executive Director determined did not change the meaning of the conditions, have been made in this document without the use of annotated or highlighted text.

All of the Commission's adopted special conditions and changes in the project description proposed by the applicant and approved during previous Commission actions continue to apply unless explicitly changed in this action. New conditions specifically imposed in this action on Amendment 19 are shown in the following section. Within Appendix A, changes to the previously approved special conditions are also shown in bold. This will result in one set of adopted special conditions. Unless previous conditions are noted for revision, they are not being modified by the Commission's action on Amendment 19.

Changes to existing special conditions and new special conditions imposed by this permit amendment:

1. **Add the following subsection 8 to special condition 8 "Conformance with the Requirements of The Resource Agencies, with Respect to Threatened, Rare or Endangered Species"; Section D, "Schedule."**

8.D.

(8) Adjustment of boundaries and locations of Golf course habitat, 2003-2004

- (a) **Prior to issuance of the amended permit A5-RPV-93-005-A19, the applicant shall submit final detailed planting plans for the golf course habitat areas for the review and approval of the Executive Director. The applicant shall also agree in writing, in a form and content subject to the review and approval of the Executive Director, to maintain no fewer than 22.64 acres of coastal sage scrub on the golf course consistent with that plan. In addition the applicant shall identify, for the review and approval of the Executive Director, a location on or adjacent to the project site where it can plant no less than 0.66 acres additional coastal sage scrub mitigation. The golf course habitat shall be in locations generally consistent with the June 27, 2003 Plans by Dudek Associates. The final plan shall also include a maintenance schedule.**
- (i) **The coastal sage scrub shall installed in the 1.14 acre and 0.66 acre newly identified areas shall conform to the standards indicated in subsection 8D5 above for on-site habitat prior to opening of the 18-hole golf course for play. The golf course areas and shall be maintained in accordance with the requirements of the coastal development permit.**
- (b) **The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan including the installation of monitoring wells or other facilities within habitat areas shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission**

approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

2. AMEND SPECIAL CONDITION 18 ASSUMPTION OF RISK, TO ADD THE FOLLOWING SECTION E

18. Assumption of Risk.

E. By acceptance of this amended permit A5-RPV-93-005-A19, the applicant acknowledges and agrees (a) that the site may be subject to extraordinary hazard from landslide, earth movement and bluff failure, (b) that water features located upslope of a landslide area is subject to extraordinary hazards and that the design and execution of such work is the responsibility of the applicant, (c) to assume the risks to the applicant and the property that is the subject of this permit amendment of injury and damage from such hazards in connection with the permitted development, (d) to accept sole responsibility for the removal of any structural or other debris resulting from landslides, (e) to unconditionally waive any claims of damage or liability against the Commission, its officers, agents and employees for injury or damage from such hazards and (f) to indemnify and hold harmless the Commission, its officers, agents and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

3. ADD NEW SPECIAL CONDITION 36:

36. SAFETY AND CONSTRUCTION OF WATER FEATURES.

A. Prior to issuance of the amended permit A5-RPV-93-005-A19, or construction of any water feature on Holes 1 or 12, within the landslide repair area, the applicant shall submit for the review and approval of the Executive Director written agreements to incorporate all safety features that were recommended in the Converse letters dated February 17, 2003, April 24, 2003 and May 8, 2003, and in the Cotton-Shires review letters dated March 12, 2003, May 2, 2003, and May 13, 2003 into the final designs of the water features and the new tees.

B. Pursuant to this agreement, the applicant shall:

1. Construct a new clay cap in areas to be irrigated under which the old clay cap does not extend,
2. Implement a testing program to ensure that material stockpiled for the construction of a new clay cap meets the requirements outlined

in the Converse reports dated February 17, 2003, April 24, 2003 and May 8, 2003.

3. Implement a testing program to identify and avoid potential problems related to the construction of caisson-founded retaining walls as outlined in the Converse reports dated February 17, 2003, April 24, 2003 and May 8, 2003,
4. Construct the retaining walls consistent with the geotechnical parameters advised for their structural in the Converse report dated February 17, 2003;
5. Construct drainage systems comparable to those required by the existing permit as described in the Converse letter dated February 17, 2003,
6. Install ground water monitoring wells as described in the Converse reports dated February 17, 2003, April 24, 2003 and May 8, 2003, and
7. Implement a monitoring program as described in the Converse reports dated February 17, 2003, April 24, 2003 and May 8, 2003

C. The applicant shall provide two copies of all monitoring reports required in this special condition, including reports of the lake monitor, to the Executive Director within ten days of their completion. The applicant shall also submit any recommendations or comments by the City of Rancho Palos Verdes Department of Building and Safety or their consultants to the Executive Director within 10 days of their receipt.

D. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall be carried out without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. ADD NEW SPECIAL CONDITION 37

37. EVIDENCE OF CONFORMANCE OF ACTUAL EXTENT OF HABITAT AREAS WITH ESTIMATED ACREAGE.

A. Prior to recordation of any lot line adjustment, but in any event prior to opening of the 18-hole golf course for play, the applicant shall provide for the review and approval of the Executive Director accurate surveys showing the dimensions of all land disturbed by grading and stockpiling and all parks, trails and habitat areas offered by the applicant and or required by this permit. If any such lots or habitat areas are smaller than described in the applicant's proposal and or in the special conditions, the applicant shall submit plans

showing how any discrepancies will be resolved consistent with the terms and conditions of the permit. Following the Executive Director's review and approval of these plans the applicant shall implement them, unless the Executive Director determines that a permit amendment is required.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall be carried out without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. ADD NEW SPECIAL CONDITION 38

38. CONFLICTS WITH TEE PLACEMENT AND DESIGN

It is the intent of the Commission that conflicts between the public's safety and the design of the golf course be resolved in favor of the public. Consistent with Special Condition 5, no wire cage (or "slinky") may be constructed over any trail on the golf course. Conflicts shall be resolved without closing the trails describe in Special Condition 3, and must be resolved by redesign, closure or relocation of tees if injuries to trail users are attributed to the distance or design of trails or the relative elevation of any tee and a public trail.

Pursuant to this concern, prior to issuance of the amended permit A-5-RPV-93 005-A19; the applicant shall submit revised plans for the review and approval of the Executive Director, eliminating the new tee at Hole 9. The applicant shall also acknowledge in writing that the new tee in Hole 5 is restricted to tournament use and may only be used during the six special events allowed on the golf course each year.

6. ADD NEW SPECIAL CONDITION 39.

39. WATER QUALITY IMPACTS OF WATER FEATURES.

Prior to issuance of the amended permit A5-RPV-93-005-A19 the applicant shall provide for the review and approval of the Executive Director the following information concerning the artificial rock proposed for the water features:

- a. All manufacturers' statements concerning the chemical makeup of the material, including information on any constituents that may or have in the past leached into nearby waters,
- b. Reports of any laboratory testing of the rocks and the constituents proposed for use in the rocks and any adhesives proposed to attach the rocks to the walls,
- c. Any analysis of the tendency of the material to slough off or fragment into the water system.

The information shall be adequate to demonstrate to the satisfaction of the Executive Director that the artificial rocks and the materials used to construct them and/or attach them to the retaining walls will not be hazardous to marine life, plant or animal life or to the health of humans who may come into contact with the project lakes, streams or runoff.

7. ADD NEW SPECIAL CONDITION 40

40. DEED RESTRICTION.

PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

III. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT HISTORY

In April 1993, two co-applicants, Zuckerman Building Company and Hon Investments received a permit to re-subdivide ten lots and develop 83 residential lots, a golf course, a trail and park system and a Habitat Enhancement Program into 2 tracts. The City had approved a project design that clustered 83 single-family units on two stable areas of the site and allowed the development of a golf course where the factor of safety was less than 1.2.¹ In addition to geologic safety, the City conditions, the applicant's final project and the Commission's conditions of approval addressed two additional issues: the protection of existing public access on the site, and the protection of habitat. The Department of Fish and Game and the United States Fish and Wildlife Service (USFWS) had conceptually approved the Habitat Enhancement Program (HEP), which was required because of the discovery of a threatened bird, the coastal California gnatcatcher, on the property. The special conditions required protection of 7.7 acres of existing coastal sage scrub, 37.8 acres of bluff face, and restoration of 20.4 of acres of coastal sage scrub on the property in preserves. The applicants also indicated that they intended to plant an additional 10 acres of CSS in the "non-active play areas" of the golf course in order to conform to the HEP. The conditions also required reservation of all but the roads in an 85.5-acre property just outside the coastal zone, the Switchback property², and 20 acres of adjacent park, Shoreline Park for habitat use. These preservation and restoration efforts allowed the applicant to clear 5.6 acres of high quality CSS and an additional 27.5 acres of disturbed CSS. The habitat issues are described in more detail in section C below.

Many members of the public testified that the public had long used the site. While the applicant did not agree that prescriptive rights existed along the trails found on the site, the applicant proposed a network of public trails linking public parks and open spaces along the bluff edge and at the project entrance, including a park on the promontory in the center of the project, Halfway Point. The applicant also proposed to develop and dedicate four on-site pedestrian routes from the frontage road; Palos Verdes Drive South to the beach and, in addition, agreed to improve a path from the road to the beach over the adjoining undeveloped public park Shoreline Park. The final proposal, as approved, included 75.5 acres of dedicated lands³ in addition to approximately 26,000 linear feet of trails. The Commission approved the applicant's proposal.

¹ A factor of safety is the ratio of the forces resisting a potential landslide to the forces driving the potential landslide. A factor of safety of 1.5 generally is required before new residential development is permitted.

² So identified because Palos Verdes Drive East, a major road, extends up the property in several sharp curves, dividing it into two segments.

³ 67.1 acres of habitat preserves and parks were required to be revegetated as habitat preserves, 8.4 acres of parks.

In 1994, the Commission amended the project to relocate a golf clubhouse nearer to the bluff top promontory at the center of the property and to eliminate several residential lots that were not sufficiently stable to develop residentially. In 1995, the Commission, the City of Rancho Palos Verdes and the applicant settled a lawsuit brought by opponents and expanded the areas on the property that would be replanted in habitat after grading. The applicant requested an amendment to reduce the project to 75 single-family residential lots, incorporated four moderate cost units, additional parking, and additional areas of restored habitat on the non-active play areas of the golf course (identified as “non-golf setbacks” in the settlement). The settlement also required the City of Rancho Palos Verdes to accept fee ownership of certain park and open space land.

In 1997, the Commission approved a modification to its conditions so that dedications of trail and park areas could occur before lot lines were established. The applicant recorded offers to dedicate based on mapped depictions of the areas to be dedicated, the permit issued and grading commenced. In May 1999, the residential lots in the easterly tract, Tract 50667, recorded, but pending discussions concerning liability, the City of Rancho Palos Verdes has not accepted the parks and trails, so the applicant has not recorded the exact boundaries of the park and open space lots. All trails except for trail along Palos Verdes Drive West and within tract 50666 (the westerly tract) were complete.

In June 1999, a landslide occurred that removed over 17 acres, including portions of 4 trails, some 5.88 acres of restored habitat areas and 2 holes of the golf course. The applicant proposed to repair the golf course, the habitat areas along the bluff top and the trails. In July 2000, the Commission approved an amendment, A-5-RPV-93-005-A-15, that authorized the repair which would impact an additional 7.07 acres of habitat for grading and stockpiling and which would require temporary closure of some trails. After the slide, to mitigate permanent and temporal loss, the applicant agreed to restore an additional 26.96 acres of habitat over an above habitat required as part of the original approval. As part of the repair, the applicant agreed to restore the trails and habitat areas⁴ and reconstruct the park at Halfway Point. The Commission approved this reconstructive work, and subsequently approved two immaterial amendments (A-5-RPV-93-005-A-16 and A-17) that allowed more time for the applicant to receive approval from the United States Fish and Wildlife Service and the Department of Fish and Game, and allowed the applicant to use a parking area next to the slide for passage of heavy equipment and stockpiling.

In August 2000, the City, the United States Fish and Wildlife Service (USFWS) and the Department of Fish and Game approved an amended Habitat Conservation Plan (HCP); the applicant has secured the off-site land and commenced restoration. Work on the second restoration efforts lagged due to several dry years and the financial problems of the original applicant. Several on and off-site restoration areas have not met coverage goals and need weeding. Representatives of the new owner indicate that maintenance of the restoration area has resumed.

⁴ Ten acres will be restored on the restored bluff top, additional areas will be restored in Shoreline Park and in Forrestal Draw.

While the repairs were underway, ownership of the project transferred to a third party. The new owner, V. H. Properties, now propose several changes in the project. First, the new owners propose to change the configuration some golf holes and to add new water features to the golf course. These are the changes now before the Commission. In the near future, the new owner proposes to increase the restaurant service area at the golf club house and to install a driving range on some of the residential land open space lots on tract 50666. The final clubhouse revisions, after-the-fact revisions to the repair plan and final park plan are pending at the City. The applicant has not yet submitted the plans for the driving range to the City. The applicant has requested that the Executive Director report the golf course work to the Commission separately, in advance of these other requests, arguing that the impacts of the changes to the golf course on geologic stability, on habitat and on parks and trails provided by the project are minimal and can be mitigated within the golf course. Therefore, the applicant argues, the Commission and the City can review the golf course changes without prejudicing Commission's review of the other proposed changes.

Detailed description of work presently proposed:

The applicant proposes water features at Holes 1, 4, and 17 and to relocate the fairway of Hole 1 within the golf course. In addition, the applicant proposes new tees at holes 2, 3, 4, 5, 7, 9 and 16. The applicant also requests an after-the-fact approval to create new back tees for Holes 1 and 12 within the slide repair areas, where grading is underway for slide repair. The back tee at Hole 1 will be elevated on fill and require a retaining wall. The new tee at Hole 12 requires a change in the location of the golf course habitat area. The changes at Holes 1, 4, 3, 5, and 12 require either removal of habitat or changes to the location of restoration pledged to mitigate landslide damage occurring as part of the landslide and its repair. The new tees at holes 1 and 12 are rough-graded. The changes in Hole 9 will impact about 102 square feet of wetland mitigation. The changes at Holes 4 and 5 require lot line adjustments. The lot line adjustments will have no effect on habitat; the change at Hole 5 will result in a drive across a vertical access trail that connects a five-car parking lot with the bluff edge trails (Exhibit 4).

Present status of Project. As noted above, the applicant has recorded all offers of dedication required by the Commission but has not recorded easements required in the settlement (and incorporated into the project description in the second amendment.) The offers to dedicate are recorded as depictions of the final offers. The applicant has not recorded metes and bounds descriptions of dedicated land in tract 50667 as required by Special Condition 1. The trails on the east end of the project, within Tract 50667, are complete and open to the public. Pioneered trails in Tract 50666 to and along the bluff remain open; an emergency trail across the golf course is open, as is public parking. A golf clubhouse is constructed and a restaurant and snack bar are open to the public. As noted above, the trails located in and adjacent to the residential portions of Tract 50666 have not been constructed, and trails located along a widened Palos Verdes Drive South

are still under construction. Fifteen holes of golf are open. Gnatcatchers have been nesting in the restoration areas.

Grading for repair of the golf course and park is nearing completion, but as of submittal of this amendment, the applicant had not commenced reconstructing and replanting the park and habitat areas damaged in the slide and in the repair efforts. The applicant has made some changes in the grading plans during construction. The applicant has also proposed some changes to the clubhouse and the park and trail designs to accommodate changes in the final grading plans and to accommodate changed marketing plans. The amendment request for the changes in the park, clubhouse and grading plans are expected to be before the Commission in January or February 2004.

B. CONSISTENCY WITH THE NATURAL HAZARDS AND CORRIDORS ELEMENTS OF THE CERTIFIED LCP.

The certified LCP identifies areas of varying degrees of risk and levels of geologic and habitat protection. The Corridors Element of the LCP is a series of overlays reflecting biological and geologic sensitivity, visual sensitivity, and suitability for public access. It anticipates that land adjacent to the bluff edges would be reserved for public access, trails, and habitat preservation and that development would be located further inland. Rancho Palos Verdes' certified LCP "Corridors" and "Natural Hazards" elements identify the bluff edge and bluff face as the most sensitive areas and subject to the most protection.

(1) NATURAL HAZARDS.

The LCP requires avoidance of hazardous areas and clustering of development in safer areas. The LCP is based on a policy of avoidance. Activities in the most sensitive areas are highly restricted, in order to avoid hazards, habitat damage and other problems related to building near cliffs and bluffs.

LCP Policies and Project History. Landslide C was identified in the process of adopting the City's LCP and in approving this permit. In the Natural Hazards element, various constraints (hazards, vegetation, slope, flooding) were identified by the initials "CRM" (critical management) and a code number. The bluff face and the area of the present slide were designated CRM 1 extreme slope, CRM 3 geologic hazard, CRM 4 marginally stable, and CRM 7-flood inundation hazard in the certified LCP. The City LCP states in part:

"...The purpose of this district (CRM1) is to regulate use development and alteration of land in extreme slope areas so that essential natural characteristics such as land form, vegetation and wildlife communities, scenic qualities and open space can be substantially maintained. The district further considers the risk to public safety from earth slides and slips, erosion and attendant siltation. Regrading, requiring cut

slopes and embankments is a potential instigator of landslide and the probability of these occurrences can be high within this district...”

Landslide C is designated “CRM 3, Geologic Hazard” in the LCP, which restricts development in CRM 3 lands to recreational features and trails requiring minimal grading. The remainder of the golf course is located on lands classified in the LCP as CRM 2, (extreme slope and insufficient information)

In the early 1980’s, the City rejected a proposal for residential development over much of the site because the presence of adverse bedding planes resulted in a calculation of a factor of safety of less than 1.5 and even less than 1.2 for extensive areas of the site. Not only did the bedding dip toward the coast, surveys revealed two layers of bentonite in the sedimentary layers.⁵ Instead, the applicant proposed a golf course over much of the site. In 1993, the City and the Commission approved a mixed-use development that located structures on the more stable areas of the site, and the golf course, habitat and access trails on the less stable areas of the site. However, the public trails were located along the bluff edge. The bluff edge trail and bluff edge habitat restoration areas as well as parts of the golf course, including most of Hole 18, extended onto Landslide C.

Recent Landslide The June 1999 landslide severely impacted public access and habitat, required the closure of two trails and delayed the opening of a public park. As noted below, the slide and the repair efforts resulted in the removal of almost 13 acres of environmentally sensitive habitat, coastal sage scrub. The slide that occurred on June 2, 1999 was a reactivation of an ancient slide, identified as “Slide C” in the project’s documentation. Over seventeen acres were affected. The slide moved a piece of the bluff face outward and down, leaving a depression at least 100 feet wide behind it (called a “graben” by geologists) and isolating a portion of the bluff top. The five-acre central block was fractured by numerous cracks, some of which were up to five feet wide and 80 feet deep. In simple terms, a large block of material slid seaward on a layer of bentonite identified as the “upper Bentonite layer,” which extends from near sea level to an area about 150 feet inland of the former edge of the bluff.⁶ About the same time, other fissures were noted at the seaward tip of Ocean Trails Park and adjacent to a trail near the eastern end of the project. Those fissures have not resulted in catastrophic failures, but are the typical “raveling” expected near the top of the bluff.

This amendment raises two major issues that involve geologic stability:

First, the applicant proposes to add three water features to the golf course, while acknowledging that the introduction of moisture into the bentonite sediments that underlay

⁵ See below “Recent Landslide”. There is a lower layer of bentonite that, in the middle of the site, extends almost to Palos Verdes Drive South. There is no evidence that the slide moved along this lower layer in the recent failure.

⁶ Bentonite is highly plastic clay, derived from volcanic ash that swells and becomes a slick, soapy material when it is wet. The 0.5” to 3” thick layer of bentonite about 90 feet below the former ground surface was the slip surface for the June 2nd landslide.

the site was instrumental in causing the failure of Slide "C". Second, by extending the golf holes by adding additional tees, the applicant will expand the area that is planted with turf, requiring irrigation, including water pipes and the like. In addition, several retaining walls with imitation rocks will be necessary to support the "waterfalls" which will cascade over the faces. Some retaining walls are planned in locations where the developer buried excess rock during construction of the golf course.

While a large part of the upper bentonite layer has been removed in the course of slide repair, and the slide repair has created a mechanically stabilized earth (MSE) wall (with a factor of safety of 1.5) at the seaward edge of about one quarter of the golf course, there are still potential issues. First, the lower bentonite layer extends from almost Palos Verdes Drive West to the cliff face. All the proposed water features are located on land underlain by bentonite, although there is some evidence that the bentonite layer near the Hole 1 water feature dips away from the cliff face. The bedding planes under the golf course and under Palos Verdes Drive dip out of the face of the cliff. The rock underlying the golf course is porous and moisture can percolate through it. Ground water that accumulates and results in either a temporary or long-term elevation in the water table, results in a buoyant force that effectively reduces the forces resisting landslide initiation. Thus, the infiltration of ground water can lead to a landslide, as it did in June 1999.

In addition to these two major issues, the City geologic consultants have expressed concern about the stability of the walls due to complications that might arise during their construction due to the presence of buried rocks in the fill material in which they will be founded. The consultants have recommended that the applicant perform additional geologic tests in advance of issuance of building permits. To address the problem of water leaking from the water filters, the City is requiring a monitoring well near Hole one, where there is not yet a monitoring well, the installation of a clay liner under all water features, testing of stockpiled clay to be sure it meets the hydrologic characteristics necessary for the clay cap, the installation of subdrains, and performing monitoring of the water lines feeding the water features. In addition, the City requires that a lake monitor, its own independent engineer, be present during installation of the water features.

The Commission's Senior Geologist Dr. Mark Johnsson has reviewed the geotechnical reports and reviews submitted in support of the proposed water features and other golf course changes (Exhibit 10). The Converse report dated February 17, 2003 provides guidelines for accomplishing the proposed golf course changes in areas outside of the landslide repair. Dr. Johnsson concludes that these guidelines, which include the construction of a new clay cap in areas to be irrigated under which the old clay cap does not extend, the construction of drainage systems comparable to those required by the existing permit, and the geotechnical parameters for use by the structural engineer in the construction of the proposed retaining walls, should be incorporated into the project description or be required by special condition.

A series of review letters by Cotton-Shires (dated March 12, 2003 and May 2, 2003) identify potential problems related to the construction of caisson-founded retaining walls in

areas where oversized rock was disposed of in the artificial fill, recommends for a testing program to ensure that material stockpiled for the construction of a new clay cap is adequate to the task, and recommends ground water monitoring wells and a monitoring program. These recommendations are responded to in Converse letters dated April 24, 2003 and May 8, 2003. Dr. Johnsson concurs with the Cotton-Shires review letter dated May 13, 2003 that the recommendations put forth in each of the Converse letters adequately addresses these concerns.

Dr. Johnsson concludes that the amount of grading proposed and, especially, the construction of new water features and relatively high retaining walls constitute sufficient departures from the previously approved amendment that a new amendment should be required and brought before the Commission. That said, it is his recommendation the Commission approve the proposed plans, subject to the recommendations in the Converse reports dated February 17, 2003, April 24, 2003 and May 8, 2003.

The applicant proposes these water features along with the safeguards recommended by the City and by its own consultant. These safeguards include a system of (clay) liners, monitoring wells and automatic cutoff valves so that leaks will not result in the infusion of water into the sediments of the site. The City requires the applicant to employ an independent lake consultant answerable to the City during installation of the water features. Nevertheless, the Commission is requiring that such devices be incorporated into the plans and then, that any change in lake design or in these mitigation measures be reported to the Executive Director to determine whether an amendment is necessary. For this reason, the applicant is required to provide working drawings and updated geologic reports to the Executive Director.

Assumption of Risk Deed Restriction

Because this development includes some risks to the applicant's property and to any other public or private property that may be damaged by an activated slide, the Commission indicates that it has approved this application based on the applicant's assertion that while risky the development can be carried out safely.

The certified LCP, consistent with Section 30253 of the Coastal Act allows new development in areas of high geologic, flood, and fire hazard to occur so long as risks to life and property are minimized and the other policies of the certified LCP are met. The Commission recognizes that new development may involve the taking of some risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his/her property.

The proposed water features, as described above, pose a risk to stability because they are constructed on land with a factor of safety against landsliding of 1.2. This land may have been partially stabilized by a mechanically stabilized earth wall downslope of the proposed water features. According to reports by Converse Associates, which were reviewed by

City consultants, Cotton Shires, these water features can be built safely. However, the applicant commissioned these reports, and ultimately the conclusion of the reports and the decision to construct the project relying on the report is the responsibility of the applicant. As noted elsewhere, there are numerous hazards on the property, which additional water may exacerbate. The geotechnical evaluations and the designs to mitigate the effects of leakage do not guarantee that future erosion, landslide activity, or land movement due to broken pipes will not affect the stability of the proposed project or that movement of offsite slides might not affect this property or adjacent roads. This development is located on a site where failure can and has occurred. The golf course is located on a slope underlain by adverse bedding planes and terminating in a bluff and a landslide. Because of the inherent risks of this situation, the Commission cannot absolutely acknowledge that the design of the water features will protect the golf course. Therefore, the Commission finds that the proposed project is subject to risk from landslides and that the applicant should assume the liability of such risk.

The applicant may decide that the economic benefits of development outweigh the risk of harm, which may occur from the identified hazards. However, neither the Commission nor any other public agency that permits development should be held liable for the applicant's decision to develop. Therefore, the applicant is required to expressly waive any potential claim of liability against the Commission for any damage or economic harm suffered as a result of the decision to develop. The assumption of risk, when recorded against the property as a deed restriction, will show that the applicant is aware of and appreciates the nature of the hazards which may exist on the site and which may adversely affect the stability or safety of the proposed development.

In case an unexpected event occurs on the subject property, the Commission imposes a new section E to Special Condition 18, which requires the land owner to assume the risk of extraordinary erosion and/or geologic hazards of the property and accept sole responsibility for the removal of any structural or other debris resulting from landslides, slope failures, or erosion on and from the site. The Commission requires to applicant to record the assumption of risk as a deed restriction, along with all the special conditions of this permit. The deed restriction will provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely in the future.

Therefore, prior to issuance of the Coastal Development Permit, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, which reflects the above restriction on development. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit. As conditioned, the development of the new tees and the water features is consistent with the geologic safety provisions of the certified LCP.

(2) ENVIRONMENTALLY SENSITIVE HABITAT.

The applicant proposes to remove 0.8 acres of (CSS) is presently established on the golf course as part of Habitat Conservation Plan and coastal permit requirements and replant 1.14 acres of CSS in areas that are presently not planted in CSS. The applicant also proposes to reconfigure the location and configuration of the strips of coastal sage scrub habitat (CSS) installed within golf course boundaries. The result of the reconfiguration would be that the 0.7 of the CSS removed for golf course enhancements would be replaced on the golf course within the 1.14 acres of newly planted areas. The applicant also proposes to change the location of some of the CSS that the Commission already approved to be removed and replanted as part of the landslide repair. Additionally, 0.1 acres of CSS were to be removed in order to construct the tees and water features will be replaced in the same location it previously occupied. The applicant proposes to replant 1.2 acres removed by stockpiling, as previously approved, in its previous location. An area of restored golf course habitat, 0.3 acres in size that was damaged by stockpiling would be converted to golf course use. These 0.3 acres of CSS would be replaced within the 1.14 acres of newly planted CSS on the golf course.

With respect to the present amendment, the applicant does not propose 2:1 replacement for this current relocation, instead, arguing that its obligation is to meet the 20 acre requirement in the HCP for habitat on the golf course, which it meets, and pointing out that its replacement ratio exceeds 1:1 (net removal 0.7 acre; replacement not committed to other obligations 0.84 acres). (See Exhibits 8, 9, 11-13.) The applicant indicates in the attached Exhibit 1 that it now views the obligation for replacement of habitat within the golf course that is damaged as 1:1.

The revised HCP and the landslide repair amendment (A-5-RPV-93-005-A15) established that coastal sage scrub damaged by the landslide or removed for landslide repair should be replaced at a 1:1 ratio on site and 1:1 ratio off-site to make up for temporal loss. Even though the final calculations in the HCP are silent about replacement of the CSS on the golf course, the applicant, then, accepted 2:1 replace of its original losses (Exhibits 13,14, 15, 17). While the habitat on the golf course does not provide nesting, it is a necessary part of the pattern of habitat required by the resources agencies. It is a link between the band of restored habitat at the edge of the cliff and the more extensive areas off the site and inland at the Switchback, which the applicant was allowed to consider as part of this restoration project. Gnatcatchers are small birds and do not fly very far. The golf course habitat formed a staging area and connection. If habitat has a role and it is taken away, it has been the policy of both the agencies and the commission to require additional habitat provided to mitigate for temporal loss. The commission does this by requiring a 2:1 ratio of mitigation for any habitat that is removed.

The following is staff's summary of the habitat impacts and mitigations proposed of recent activities on the golf course. Staff concludes that the applicant needs to provide an

additional 0.66 acres of CSS restoration to fully offset the impact of the proposed project and to be consistent with the certified LCP.

Description	Credit	Debit	Balance
Golf Course Landslide Damage		1.50	(1.50)
Mitigation Proposed (on-site) for Landslide	1.20		(0.30)
Conversion of CSS habitat to water feature (1:1)		0.80	(1.10)
Water feature conversion requires impacts to be mitigated at 2:1		0.80	(1.90)
Mitigation Proposed For CSS Conversion to Water Feature	1.14		(0.76)
In-Place Restoration of Prior Mitigation	0.10		(0.66)

The applicant has prepared a map that summarizes golf removal and planting and landslide removal and replanting under this proposed amendment, the original permit and the landslide repair amendment, A-5-RPV-93-005-A15. This map combines the changes proposed in the permit amendment application with the applicant's previous obligations (See Exhibit 1).

In the original permit, the applicant agreed to plant 20 acres of coastal sage scrub on the golf course, submitted a plan showing 22 acres, and planted all but .56 acres (21.44 acres.) The landslide and its repair damaged 1.5 acres of coastal sage scrub on the golf course (which should leave 19.94 acres in place, although the applicant reports on Exhibit 1 that there is actually less than that, 19.7 acres.) The applicant, in completion of its past obligation and carrying out its present one asserts it will plant a total of 3 acres of CSS in four types of areas on the golf course that are designated as CSS in this plan:

- Areas not presently designated CSS (1.14 acres),
- An area designated for CSS in 1997 but never planted (0.56 acres),
- Areas cleared during construction of water features (0.1 acres), and
- Areas removed by landslide and its reconstruction (1.2 acres).

The applicant's position is that instead of mitigating for removal, it simply has to meet the obligation in the HCP, which it states it will carry out by providing 22.41 acres of CSS on the golf course after replanting is complete. Staff was unable to reconcile these figures, and has asked the applicant to recalculate, and to resurvey the golf course to determine the exact amount of existing coastal sage scrub. (See proposed Special Condition 37). Previously, the HCP (which is adopted by reference in Special Condition 8 of the CDP) required 20 acres and the applicant actually planted 21.44 acres on the non-playing areas of the course. The resources agencies approved the plan (See Exhibits 1 and 6).

This proposal raises three potential issues:

- Consistency with Coastal Act policies protecting environmentally sensitive habitat (ESHA) as interpreted by the courts in the Bolsa Chica decision;
- Consistency with the certified Local coastal program (the statutory standard of review in post certification appeals), and
- Consistency with the CDP A-5-RPV-93-005, as amended.

While the applicability of the Bolsa Chica decision to post certification matters is not entirely clear, in order for the consistency with Bolsa Chica to be an issue, the habitat in question must be environmentally sensitive habitat as defined by the Coastal Act. Coastal Commission Staff Ecologist Dr. John (Exhibit 7) visited the site on November 5, 2003 to determine whether there was evidence that the golf course CSS is considered environmentally sensitive habitat. He states:

The areas between the fairways at the Ocean Trails Golf Course are generally vegetated with coastal sage scrub (CSS) species (habitat areas) or a combination of coastal sage scrub species and drought tolerant ornamental trees (landscape areas). We examined each of the habitat areas proposed for modification during our site visit on November 5, 2003. The habitat areas appear healthy and have low cover of weeds due to continuing maintenance activities. Some of the habitat areas have relatively low species diversity, however there are apparently ongoing efforts to increase diversity through seeding and planting. These areas of CSS habitat tend to be narrow linear features that are somewhat isolated from large blocks of CSS by the golf course fairways. Although California gnatcatchers have been nesting successfully in restored coastal sage scrub in canyons within the golf course and in larger habitat blocks around the periphery of the golf course, they have not included golf course habitat in their breeding territories. Gnatcatchers have been occasionally sighted in a few areas of golf course habitat since 2001, but these are thought to have been dispersing juveniles (M. Sweesy, personal communication, November 5, 2003).

Given the relatively isolated and fragmented nature of the coastal sage scrub within the golf course itself and the fact that it has not been used by breeding California gnatcatchers, I do not think those habitat areas meet the definition of Environmentally Sensitive Area in Section 30107.5 of the Coastal Act. This includes those areas that have been proposed for modifications. Should any of these areas be found to provide significant support for rare species, their status would have to be reassessed (JD November 14, 2003).

Therefore, the CSS plantings on the golf course, in their present condition, do not fall under the protection of the Bolsa Chica decision.

The proposed new tee at Hole 9 will remove 102 acres of freshwater marsh habitat proposed by the applicant in mitigation of some fill permitted in a coastal canyon (Exhibit 3). The applicant states that it has restored ample riparian vegetation elsewhere on the site (see special condition 8.D.6) and that the area removed can be absorbed in the other restoration areas. This issue need not be evaluated because the new tee on Hole 9 is not recommended for approval. Since the applicant did not provide information in its original

application to support the removal, there is no evidence supporting the removal of this habitat or which would enable the Commission to judge its conformance with either the requirements of the Bolsa Chica decision, or with the LCP standards cited below.

The second issue is consistency with the LCP policies adopted to carry out Coastal Act Section 30240, which protects environmentally sensitive habitat and areas adjacent to it. The Corridors Element of the certified LCP protects sensitive habitat, identifying the bluff tops and bluff face as areas that should be investigated, and if habitat is present, impacts to the habitat must be “fully offset.”

The Natural Element Section of the certified LCP, Policy No. 8 states:

It is the policy of the City to require developments within or adjacent to wildlife habitats (CRM 9) to describe the nature of the impact upon the wildlife habitat and provide mitigation measures to fully offset the impact.

The LCP identified areas in which more study would be needed to identify the kind of habitat that was present and the necessary degree of protection. While the LCP identified the bluff faces and canyons on this property as potentially sensitive, the bluff tops were not so identified. The LCP proved to be an error: During the project’s approval, the coastal California gnatcatcher (*Poliophtila californica californica*), a threatened species, was identified on the property. The applicant, Fish and Game, and Fish and Wildlife Service agreed to a Habitat Enhancement Plan (HEP) that, after approval of the project, was adopted as a Habitat Conservation Plan (HCP). The plan allowed the “take” of some gnatcatcher habitat as long as it was replaced on more than a one-to-one basis. The applicant achieved this on- and off-site. The corridor along the bluff top was identified as one of the areas that must be revegetated to provide nesting areas for the gnatcatcher, the cactus wren (*Campylorhynchus bunneicapillus cousei*) and other increasingly rare and threatened species depending on Coastal Sage Scrub (CSS) and Coastal Bluff Scrub (CBS). Much of the bluff top had been barren and weedy—patches of habitat were located in the center of the property, on slopes and in drainages.

At the time of its approval of the project, the Commission found that the project would “fully offset” the removal of coastal sage scrub based on the applicants’ assertion that a plan to consolidate habitat and create reserves on and off the property would result in a net gain in the quantity and quality of the habitat. The permit allowed the relocation and consolidation of habitat that was located throughout the site onto a strip along the bluff edge and onto certain City-owned land that is located off-site. As noted elsewhere, the 1993 coastal development permit required 67.1 acres of habitat areas to be reserved on-site and 20 acres in Shoreline Park and 85.50 acres of the “Switchback” (the area outside of roads and fire clearance strips⁷) to be reserved for habitat protection purposes (Special Conditions 1 and 2). The applicant was required to restore 21.4 acres on-site, restore 20 acres off-site,

⁷ Early offers characterized the Switchback as “almost 100 acres”. However, when roads, including the road widening of Palos Verdes Drive South required by the City in as mitigation for this project, and fire clearance adjacent to roads is taken into account, the actual amount was less.

and enhance 10 acres of Shoreline Park for a total of 51.6 acres to be actively enhanced or restored over a five-year period. The resources agencies allowed the applicant to increase these numbers as noted elsewhere by counting, among other things, a relatively untouched canyon on the site, the areas dedicated as a result of the lawsuit and the golf course restoration.

In this case, the resources agencies agree that the proposed changes to the golf course habitat plan is consistent with protective measures adopted to offset the habitat damage of the original development, and that the damage that would occur will be fully offset by replanting.

The Commission finds, however, if CSS is removed voluntarily, in order to fully offset the removal, the replacement should be subject to the same standards that applied to the habitat that the project is removing. The applicant states that it intends to move “mature plants” that will establish quickly. The existing permit states that the habitat on the site shall be of sufficient maturity to support nesting and feeding. The golf course habitat is mature enough to support feeding, but does not support nesting because the areas of habitat are too small and too prone to disturbance to support nesting.

To fully offset the removal, the mitigation should be at a ratio of 2:1 and the restored area should maintain the functioning of the habitat in restoration project as a whole. Special Condition 8.D.5a establishes these criteria. It states that the 18-acre golf course cannot open or houses be constructed on more than five lots in each tract until:

- (a) The restored habitat in the onsite restoration areas noted above with the exception of landslide area restoration required in subsection 7 below, is of sufficient maturity to supply food and cover and nest areas for Gnatcatchers and cactus wrens and other coastal sage scrub dependent species ... and

The Commission finds that to fully offset impacts to the habitat, there should be no damage to the functioning of the habitat as a result of allowing some adjustment in its location. Applying the same standard to the replacement as applied to the existing habitat means that replacement habitat must be established and functioning before construction of any houses on lots approved in this permit may begin, or before the 18-hole golf course can open for play.

The third issue is whether the proposed development is consistent with the underlying coastal development permit subject to this amendment request. In addition to dedicating and restoring preserves, in Special Condition 8 the Commission required the applicant to conform to any requirements of the HEP (which required 10 acres of restoration on the golf course). The Commission in a later amendment changed the reference from the HEP to the HCP; consequently, the permit now requires conformance with the HCP. In the HCP, the applicants agreed to create 20 acres of CSS in the non-playing areas of the golf course. The HCP included more on- and offsite acres in the restoration program than were in either the HEP or the Commission action. An example is that the HCP took the 3.9

acres of “non-golf setback” into account. It considered a significant part of Forrestal Canyon as a preserve adding another 5.3 acres in mitigation credit. It allowed another 1.2 acres of restoration in the off site program. On the other hand, the HCP used different criteria and more categories to judge habitat. While the major dedications were identical to the Commission’s action, the numbers are almost impossible to compare. The HCP stated that, following completion of the development, “there will be a net gain of 29.7 acres of CSS and 2.9 acres of coastal bluff scrub on the project site.” It stated there would be a net gain of “31.7 acres coastal sage scrub offsite.” To reach this total, the USFWS counted the golf course restoration areas. The restored areas on the golf course were expected to provide “nesting and migratory opportunities for coastal California gnatcatchers and cactus wrens” (Exhibits 20-23.)

In its original approval, the Commission treated the revegetated golf course areas differently from other areas. The approval did not contain a map of the areas in the golf course identified for revegetation, unlike bluff top corridor areas or the offsite areas, which were carefully described. The Commission did not add a condition requiring the golf course revegetation area to be designed prior to issuance of the permit; instead, it relied on the inclusion of golf course revegetation areas in the applicants’ characterization of the restoration that was pledged in the HEP, that they would institute if the project were approved (Exhibits 19, 20). The Commission did not require dedication of the areas on the golf course, and allowed the applicant to defer mapping the CSS until the golf course design was complete. Instead, it counted the golf course areas as part of the habitat restoration, and required conformance with the HEP (now HCP). Before beginning work on the golf course, the applicant and its golf course designer provided the Executive Director with detailed plans showing the provision of 20 acres and conformance with the HCP. While the applicant is bound to conform with the condition, the terms of the condition implies intent to grant flexibility within the golf course in reaching the 20-acre requirement of the HCP.

After the 1999 slide, the applicant was required to amend its HCP. Under federal regulations, the applicant has an obligation to replace both habitat damaged by the slide and habitat damaged by geologic exploration and reconstruction. The HCP estimates that the total habitat lost through both causes is 12.95 acres, which the Commission and the resource agencies required the applicant to replace on site. Because of the time that is expected to elapse between the initial damage and the establishment of replacement habitat the Commission and the resources agencies required replacement at slightly more than a 2:1 ratio to make up for interim loss of habitat, which results in a requirement of 26.96 acres of restoration on and off the site. The Commission found that this would mitigate for interim and permanent damage and “take” of animals.

The applicant has not completed the on-site slide mitigation, because the slide repair is not yet finished. The applicant asserts that the earthmoving equipment (with the exception of a few small bulldozers) left the site in early November of 2003. The applicant proposes to carry out the mitigation work at the same time as the golf course is enhanced and the habitat needing to be replaced as a result of the redesign is planted.

Within the golf course, the applicant is proposing to replace habitat lost by both the landslide and this project at a slightly greater than 1:1 ratio (See Exhibit 1 applicant's proposal and Exhibit 6, letter from the resources agencies). Special condition 8D5, imposed to allow revegetation after the slide, provides that all revegetation areas shall be planted before beginning construction of any homes in either tract, Special Condition 8.D.7 requires at all previously undisturbed habitat removed shall be replaced at 3:1 ratio. If golf course habitat that was not disturbed is considered "previously undisturbed habitat " this language implies that the applicant will need to replace 3 times the 0.8 acres removed, or 2.4 acres of habitat, instead of the habitat proposed.⁸ The resources agencies, in calculating the repair ratio for the golf course work indicate that the removal was offset in part by the provision of 2.41 acres over and above the amount of habitat originally required in the golf course.

In the special conditions of the approved permit, the standard of review for the golf course revegetation is the HCP. In this case, the applicant proposes acreage that conforms to HCP requirements, proposes removing only 4 percent of the HCP required areas, and plans to replace them with acreage of CSS over and above what was originally planted in the late 1990's. In addition, the applicant has provided written approval from all three signatories of the HCP: the City of Rancho Palos Verdes, the California Department of Fish and Game and the United States Fish and Wildlife Service (Exhibits 6 and 7).

The Commission, under the Natural Corridors element of the LCP, has a responsibility to assure that the corridors are preserved, which includes restoring and maintaining the quality of habitat on this segment of the Rancho Palos Verdes coastline. As conditioned, to fully offset the impacts of the development, the project is in conformity with the HCP and is consistent with the Natural Corridors Element of the LCP.

⁸ There is also a difference between the amount of golf course habitat (1-acre) that the applicant stated was damaged by the slide in its 2000 application for golf course repair, and the 1.5 acres the applicant now states was damaged by the slide and slide repair. This discrepancy, if it is the result of more habitat removed for staging and stockpiling than originally reported, would result in the need to install additional habitat. Since some of this discrepancy could be the result of incomplete information, measuring errors, double counting or overlapping mapping, the Commission requires that the applicant re-map and recalculate both the size and location of the areas damaged by the slide and by repairs, on and off the golf course, and the dimensions of existing habitat reserves. The Commission was provided with 12.45-acre estimate of slide damage; the HCP a month later used an estimate of 12.95 acres.

C. CONSISTENCY WITH PUBLIC ACCESS AND RECREATION POLICIES OF THE COASTAL ACT AND THE CERTIFIED LOCAL COASTAL PROGRAM.

After certification of an LCP, the Commission must find that a project, on appeal, is consistent with the certified local coastal program. If the project is located between the first public road and the sea, when the Commission considers the project *de Novo*, it must also examine the project for consistency with the public access and recreation policies of the Coastal Act. Section 30210 provides for maximum access; Section 30211 provides that existing access must be protected; Section 30212 establishes that public access must be provided when use is intensified; and Section 30221 requires that oceanfront land suitable for public recreation be reserved for that purpose.

The element of the certified LCP designed to combine multiple, overlapping standards, the Corridors Element, identifies the bluff corridors as access corridors. It requires a bluff edge public road on all projects in undeveloped areas, with areas seaward of the road to be dedicated for public use. Because of the instability of this site, the City excused the applicant from constructing a public road, but did require foot and bicycle trails between the development and the edge of the bluff.

In its action on the appeal in 1993, the Commission received testimony concerning historic public use of the trails and bluff edges on the site. The Commission reviewed petitions from people who claimed use the property for hiking, and reviewed biological assessments that identified Gnatcatcher habitat in areas slated for grading for both the golf course and for residential development. At the public hearing on April 15, 1993, the applicants proposed increases in the park and trail system. The offers of dedication that the applicants made at the hearing included additional acreage over and above the written application in response to issues raised in the staff recommendation, and by the public, regarding conformance with the LCP, potential conflicts between habitat restoration and recreation, and the project's impacts on the public's existing access to the property.

The final proposal, as approved, included 75.5 acres of dedicated lands⁹ in addition to approximately 26,000 linear feet of trails. The applicant offered to build five trails from the bluff top to the beach on its property and on Shoreline Park, an adjacent public park. The trails are located both within the dedicated parks and preserves, and on the golf course and other private land. Based on this offer, the Commission allowed the applicant to close trails, reduce their number and replace them at new locations.

In the settlement with third parties noted above, the applicant again agreed to dedicate the noted trails and parks on the site and to improve the parks and trails required in Coastal Development Permit A-5-RPV-93-005 as amended. The trails are listed and described in Special Condition 1 of this permit (See Appendix A, Conditions).

⁹ 67.1 acres were required to be revegetated as habitat preserves, 8.4 acres were to be developed as parks.

In taking this action, the Commission also noted that the golf course, which will be a privately operated course open to the public, also provided recreation. The Commission found that the Public Access and Amenity Plan was consistent with the Corridors Policy of the LCP and the Access and Recreation Policies of the Coastal Act. The Commission supported its conditions on the applicant's offer and on the consistency of that offer with Sections 30210, 30211 30252, 30240 of the Coastal Act.

The Present Proposal's Impacts to Trails.

The applicant consulted with a golf safety expert concerning the design and placement of the golf holes with respect to the safety of the trails. Several of the existing tees are close to trails. The proposed redesign of Hole 1 will increase the distance between the fairway and the principal bike trail entering the property. The proposed new tees serving Holes 3 and 5 are located closer to trails than the present tees. The edge of the new tee on Hole 3 is located 15 feet from the regional bike trail on Palos Verdes Drive South. The tee itself is 25 feet away from the trail, and 17 feet below it. The new tee on Hole 5 is located two feet away from a trail (25 feet from the center of the tee to the trail), but is also located so that the golfer will hit across a trail. When staff questioned the applicants about Hole 5, the applicants indicated that this tee would be restricted to tournament use. The permit allows up to six special events of a year, during which time two of the four on-site vertical access trails may be closed (Exhibit 4). The edge of the pad graded for the tee near the lake on Hole 9 is located 7 feet from a pedestrian trail; the distance from the center of the tee to the path is 19 feet; the elevation difference is five feet. The nearest existing tee is located 25 feet from the same trail (Exhibit 3).

With the exception of the tees at Holes 3, 5 and 9, while the new tees are close to several trails, they are not closer to the trails than the existing tees. Hole 9 is extraordinarily close to a trail (Exhibit 3). It will also impact an area that was approved to be a wetland mitigation area and that has already been planted. Special conditions 29 and 32 that refer to replacing the trails after bluff failure provide that the applicant must relocate golf facilities if they prove to be a safety hazard to visitors rather than constructing net or fencing barriers on the course. In order to avoid this conflict, the Commission requires that the applicant eliminate this tee. The Commission does not require the tee on Hole 5 to be eliminated, but instead, in new special condition 38 restricts the new tee in Hole 5 to tournament use and may be used only during the six special events allowed on the golf course each year. With these restrictions and changes to assure that public access is protected, the Commission finds that the amended permit is consistent with the public access policies of the Coastal Act and of the certified LCP.

D. MARINE RESOURCES AND WATER QUALITY.

The Certified LCP has several policies that require protection of marine resources. In its earlier action on this appeal, the Commission imposed special conditions 10 and 11 addressing water quality siltation and erosion, requiring among other things that the applicant provide the Executive Director the SWPPP report for the coming winter on

November 1 of each year. This year, the applicant has failed to provide the SWPPP, although representatives have now agreed to do this. The project contains an elaborate program to capture excess irrigation water and discharge it into the project lakes. The proposed waterfalls will operate on recirculating systems, with excess water discharges to the lakes. Surface runoff and surplus water from the project is discharged from the lakes through the canyons to the shoreline. The shoreline offshore of this project supports tide pools and kelp. The present proposal raises an issue because of the introduction of plastics and adhesives used for construction or installation of the artificial rock water falls into the recirculating lake/irrigation system.

The applicable LCP Policies in the Natural Environment Element state:

7. Prohibit activities which create excessive silt, pollutant runoff, increase canyon-wall erosion or potential for landslide, within or affecting Coastal Resource Management districts containing hydrologic factors. (CRM8)¹⁰
15. Provide mitigating measures where possible to control surface runoff that might be degrading to the natural environment.

Recent research has revealed that small quantities of some chemical pollutants, when discharged into water systems can impact habitat. In addition, small shards of plastic can also discharge into offshore waters, causing disruptions which are only now being discovered.

Therefore, the Commission requires that the applicant test the materials used in the imitation rocks of the proposed water falls and to attach the imitation rocks to the retaining wall, and use only materials that will not be hazardous to marine life, plant or animal life or to the health of humans who may come into contact with the project lakes, streams or runoff. As conditioned (Special Condition 39) the amended project is consistent with the Natural Environment Element of the LCP.

E. UNPERMITTED DEVELOPMENT

While the applicant was carrying out its slide repair, the applicant changed some of the boundaries of the excavation and increased staging areas. In response to contacts with staff, the applicants proposed to revegetate any areas that were damaged that were not initially approved by the Commission. Heights of some trees were adjusted in the repair area of the golf course. Estimates of the amount of vegetation removed because of landslides or slide repair in this permit exceeds the amount initially estimated in June of 2000 when the Commission approved the slide repair A-5-RPV-03-005-A15. An amendment to the grading for the slide repair is pending and will be reported to the Commission in early 2004. As with any large project, staff periodically receives complaints that the applicant has not complied with its conditions, in this case that maintenance of vegetated areas has lapsed, that project roads in tract 50667 are posted or that the

¹⁰ The Canyons are mapped CRM 8

applicant or its security guards have attempted to close trails in the early evening, or that sandbags are not installed.

These complaints and the corrections that may be necessary have not influence the staff's evaluation or this project. On the other hand the approval of this project or staff's visit to the site in order to process this request does not represent an agreement by staff that noncompliance in of the matters has been resolved (Exhibit 11). Although staff discovered some development on the property that has taken place prior to submission of this amendment application, and other instances in which corrections are needed, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

In this case, there are several alternatives. The first alternative is denial. The Commission could decide, with respect to either the water features or the removal of mitigation habitat that the development is inconsistent with the access policies of the Coastal Act and the policies of the certified Local Coastal Program. Based on this the Commission could decide that once an area is planted with habitat, the area is so dedicated in perpetuity. This argument could easily be made in the areas on the property that were offered for dedication as habitat and subject to recorded restrictions, which now include the 67.1 acres originally dedicated as well as the 3.9 acres reserved after the 1995 settlement and the two canyons subsequently offered as mitigation for landslide work. They are restricted to habitat. Their areas are extensive (larger than a nesting territory of a gnatcatcher) and after revegetation have supported nesting.

The areas on the golf course are physically different and are described not by location but by acreage and use; their location is generally described in both the permit condition and the HCP as within the non-playing areas of the golf course. The linear areas are subject to frequent disturbance from conversations, and golfers looking for lost balls even though the habitat areas are posted "no entry" and "habitat". As noted above relocating the golf course habitat will not reduce the productivity of the site as a whole although the golf

course habitat does provide some food and cover to juveniles after they leave their nests in nearby habitat, while exploring for new nest sites. Staff observed such a juvenile near the project lake.

With respect to the water features, again leaks from the existing lakes are implicated in the 1999 17-acre slide. More water features provide more sources of leaks, adding to the risk of reactivating the slides. Alternatives would be either to permit no additional water sources on the site or to create decorative features without water.

There are feasible alternatives or mitigation measures available; however, all of them seem to be equivalent in their effectiveness in mitigation of the significant impacts of the original project. Those impacts in 1997 were closure of existing trails, removal of habitat. The proposed alternative, as conditioned, will lessen any significant adverse impact the activity, would have on the environment. Therefore, the Commission finds that the proposed project as conditioned is consistent with CEQA and the policies of the Coastal Act.

SUBSTANTIVE FILE DOCUMENTS SPECIFIC TO THIS AMENDMENT

1. Sweesy, Michael A, Dudek Associates, Letter to Kerri Davis, USFWS, "Revised Coastal Sage Scrub Acreage Analysis for the Ocean Trails Golf Course Enhancements," June 27, 2003
2. Sweesy, Michael A, Dudek Associates, Letter to Kerri Davis, USFWS, "Coastal Sage Scrub Acreage Analysis for the Ocean Trails Golf Course Enhancements," April 29, 2003
3. Sweesy, Michael A, Dudek Associates, Letter to Greg Pfof, City of Rancho Palos Verdes, "Responses to Coastal Conservation Coalition Letter Dated May 13, 2003," May 16, 2003.
4. Sweesy, Michael A, Dudek Associates, Letter to Greg Pfof, City of Rancho Palos Verdes, "Responses to Coastal Conservation Coalition Letter Dated May 13, 2003," May 16, 2003.
5. Miller, Alan C, PhD, "Reexamination of the Biological Impacts of the 1999 Ocean Trails Golf Course Landslide C on the Adjacent Shoreline and Nearshore Environments," 14 February, 2003.
6. Morton, Jess, Coastal Conservation Coalition, letter to City of Rancho Palos Verdes regarding, Certain Water features, Driving range impacts to West Bluff Preserve, Maintenance of habitat, Tee in Halfway Point Park, parking, widening of fairways, CEQA.
7. Lu Bill T PhD, Schluter, Mark Converse Consultants Converse Project No. 02-31-210 -01, Geotechnical Evaluation, Ocean Trails Golf Course Modifications, Proposed Grading Plan Amendment, Ocean Trails Golf Course, Rancho Palos Verdes California, 1, February 17, 2003,

8. Lu Bill, T. PhD, Schluter Mark, Converse Consultants, " Geotechnical Evaluation Ocean Trails Golf Course, Proposed Grading Plan Amendment Landslide C Repair Area," The Ocean Trails Golf Course, Rancho Palos Verdes, California Converse project No. 02.31-210 -01, February 17, 2003,
9. Helenschmidt, Stan, Morrison, William, senior geo technical engineer, Cotton, Shires & Associates Geotechnical Review Comments Proposed Golf Course Modifications EC0008, March 12, 2003
10. Lu Bill, T. PhD, Schluter, Mark, Converse Consultants, "Response to Cotton, Shires & Associates, Inc. Geotechnical Review, dated March 14, 2003, "Geotechnical Review Comments Proposed Grading Plan Amendment Landslide C Repair Area," Ocean Trails Golf Course, Rancho Palos Verdes, California April 24, 2003
11. Lu Bill, T. PhD, Schluter, Mark, Converse Consultants, "Response to Cotton, Shires & Associates Geotechnical Review, dated March 12, 2003,"Geotechnical Review Comments Proposed Golf Course Modifications Converse project no 02-31-210-01, April 24, 2003
12. Helenschmidt, Stan, Cotton, Shires & Associates, Geotechnical review of Converse Consultants' response dated April 24, 2003 EC0008 May 2, 2003
13. Helenschmidt, Stan, Cotton, Shires & Associates, "Geotechnical review of Converse Consultant's response dated April 24, 2003, Proposed Grading Plan Amendment Landslide C Repair Area," Ocean Trails Golf Course, Rancho Palos Verdes, ECOOO8C California. May 7, 2003
14. Lu Bill, T. PhD Schluter Mark Converse Consultants Response to Cotton, Shires & Associates geotechnical review dated May 2, 2003, "Geotechnical review of Converse Consultants Response dated April 24, 2003, Proposed Golf Course Modifications." Converse Project No. 02-3`-210-01, May 8, 2003
15. Helenschmidt Stan Cotton, Shires & Associates Geotechnical review of Converse Consultants' response dated April 8 2003, Golf Course Modifications, EC0008, May 13, 2003

For a list of further Substantive File Documents, see Appendix C attached.